

Notice of Allowability

Application No.

10/705,772

Examiner

Kimberly Lovel

Applicant(s)

ATZMONY ET AL.

Art Unit

2167

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address–

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 26 November 2007.
2. ☒ The allowed claim(s) is/are 1-16.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

1. This action is responsive to Applicants' Amendment filed 26 November 2007.
2. Claims 1-16 are pending in this application. In the Amendment filed 26 November 2007, claims 1, 2, 5, 6, 10 and 14 were amended.
3. After a thorough search and examination of the present application and in light of the prior art made of record and Applicants' Amendments and Remarks filed 26 November 2007, claims 1-16 are allowed.

Terminal Disclaimer

4. The terminal disclaimers filed on 8 May 2008 and 29 January 2008 have been reviewed and are accepted. The terminal disclaimers have been recorded.

Claim Rejections - 35 USC § 101

5. Claims 1 and 5 are construed to represent a method.
6. Claims 9 and 13 are directed towards a "data storage facility." The "data storage facility" is construed to consist of hardware, since the Applicant's Specification states on page 9, lines 8-10 the following: "This invention is described in terms of an implementation in a direct access storage device (DASD) that includes multiple physical disk drives."

Reasons for Allowance

7. The following is an examiner's statement of reasons for allowance:

In the Examiner's Office Action for Non-Final Rejection dated 23 August 2007, claims 1-16 were rejected under 35 USC 103 based primarily on US Patent No 6,363,385 to Kedem et al and US Patent No 6,757,797 to Kaiya et al.

In the remarks filed 26 November 2007, in response to an Office Action dated 23 August 2007, Applicant distinguished the cited prior art, (**Kedem et al.**, US 6,363,385) by stating on page 14, fourth paragraph "It is the claimed data structure that solved problems that arose during the unsuccessful attempt to apply the apparatus and method of the Kedem patent to open systems. Specifically, these are the operation data element, such as OP element 74 in FIG. 3 and the operation status element 75. In addition, Kedem discloses no "second command" as that phrase should be interpreted in Applicants' claims. As described in the specification, the first command establishes an environment; the second command initiates the

copying operation. There is no "testing" of the operation data element and the operation status element in the Kedem patent. Finally, there is no "updating" of the operation status element, thereby enabling the completion of a next operating phase. Generally speaking, Applicants' claims define two elements in a data structure that provide a basis for enabling different phases of the operation to occur at the proper time and in the proper order. No such elements are shown or suggested by the Kedem patent because there was no such control requirement in the Kedem patent." After consideration of these arguments and further searching of the prior art, the arguments provided are persuasive.

A thorough search for prior art in the EAST database and on domains (NPL-ACM, Google.com, IEEE Xplore, Google Patents) has been conducted. The prior art searched and investigated in the database and domains does not fairly teach or suggest the claimed subject matter as described above and reflected by the combined elements in each of the independent claims 1, 5, 9 and 13.

The dependent claims 2-4, 6-8, 10-12 and 14-16 depending on independent claims 1, 5, 9 and 13 respectively, are also distinct from the prior art for the same reasons.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Lovel whose telephone number is (571) 272-2750. The examiner can normally be reached on 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kimberly Lovel
Examiner
Art Unit 2167

30 January 2008
kml


JOHN COTTINGHAM
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